No. 91-480

MOTION FILED
OCT 15 1991

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE TWENTY-SIX MULTI-EMPLOYER TRUST FUNDS IN SUPPORT OF PETITIONER

JOHN J. DAVIS, JR.*
RAPHAEL SHANNON
LORI A. NORD
MCCARTHY, JOHNSON & MILLER
Law Corporation
595 Market Street, Suite 2200
San Francisco, CA 94105
(415) 882-2992
Attorneys for Amici Curiae
* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The U.A. Local No. 467 Pension Trust Fund, U.A. Local No. 467 Health and Welfare Trust Fund, Northern California Plasterers Health and Welfare Trust Fund, Bay Area Pipe Trades Pension Trust Fund, Bay Area Pipe Trades Health and Welfare Trust Fund, U.A. Local No. 159 Defined Contribution Plan, U.A. Local No. 342 Defined Contribution Plan, U.A. Local Nos. 343 and 355 Defined Contribution Plan, U.A. Local No. 444 Defined Contribution Plan, Pipe Trades District Council No. 36 Pension Trust Fund, Pipe Trades District Council No. 36 Health and Welfare Trust Fund, U.A. Local No. 393 Pension Trust Fund, U.A. Local No. 393 Health and Welfare Trust Fund, Northern California Plastering Industry Pension Trust Fund, Plastering Industry Welfare Trust Fund, Lathers Local 65L Amended Pension Trust

Fund, Lathers Union Local 88L Pension Trust Fund, Lathers Local 109L Pension Trust Fund, Northern California Tile Industry Pension Trust Fund, Northern California Tile Industry Health and Welfare Trust Fund, Sign, Pictorial and Display Industry Pension Trust Fund, Sign, Pictorial and Display Industry Welfare Fund, I.B.E.W. Local Union No. 100 Pension Trust Fund, I.B.E.W. Local Union No. 100 Health & Welfare Trust Fund, Sheetmetal Workers of Northern California Health Care Plan, and Sheetmetal Workers of Northern California Pension Trust Fund (hereinafter the "Trust Funds") respectfully move this Court for leave to file the acompanying Brief of *Amici Curiae* in support of the Petition for Writ of Certiorari filed on September 16, 1991.

In support of this motion, the Trust Funds state as follows:

1. This motion is necessitated by the failure of Respondent, El Capitan Development Company, to give written consent to the filing of a brief by the *amici curiae* applicants herein. Petitioner, Carpenters Southern California Administrative Corporation, has consented to the filing of the accompanying Brief in the written consent filed herewith.

2. The Trust Funds are multi-employer trust funds established pursuant to the Labor Management Relations Act of 1947, § 302(c), as amended, 29 U.S.C. § 186, for the purpose of administering an employee benefit plan within the meaning of the Employee Retirement Income Security Act (hereinafter "ERISA"), §§ 3 and 4, 29 U.S.C. §§ 1002 and 1003. The Trust Funds are administered by Boards of Trustees, who are "fiduciaries" within the meaning of ERISA, 29 U.S.C. § 1002(21)(A), charged with the responsibility of administering the employee benefit plans and managing the disposition of their assets, including, among other things, securing the payment of rightful debts owed to the Trust Funds.

3. The Trust Funds seek leave to file the attached brief in order to make this Court aware of the grave implications of the decision of the California Supreme Court in *Carpenters Southern California Administrative Corporation v. El Capitan Development Corporation*, 53 Cal.3d 1041, 282 Cal.Rptr. 277, 811 P.2d 296 (Cal.S.Ct. 1991). The California Supreme Court's holding in *El Capitan* that ERISA preempts the California State mechanic's lien remedy is incorrect as a matter of law, and deserves review and reversal by this Court. The California Supreme Court's decision has undermined the financial stability of ERISA-regulated trust funds and has had a chilling effect on a number of other established state remedies available to ERISA-regulated trust funds.

4. These *amici curiae* applicants are in a unique position to advise the Court with regard to the impact of the *El Capitan* decision. The Trust Funds have collected approximately $9,000,000.00 over the last 8 years from mechanic's liens or similar state claims. These Trust Funds have pending California state causes of action which have been nor will be adversely affected by the California Supreme Court's decision. Without the use of the mechanic's lien, these Trust Funds will be unable to collect delinquent contributions owed to them.

WHEREFORE, the Trust Funds respectfully request that they be granted leave to file the accompanying Brief of *Amici Curiae*.

Respectfully submitted,

JOHN J. DAVIS, JR.*
RAPHAEL SHANNON
LORI A. NORD
McCARTHY, JOHNSON & MILLER
Law Corporation
595 Market Street, Suite 2200
San Francisco, CA 94105
(415) 882-2992
Attorneys for Amici Curiae

* Counsel of Record

QUESTION PRESENTED

Whether the Employee Retirement Income Security Act § 514(a), 29 U.S.C. § 1144(a) preempts employee benefit trust funds' ability to collect unpaid fringe benefit contributions required by collective bargaining agreements through the use of the state collection remedies of general application such as the mechanic's lien law in favor of the claimants named in California Civil Code § 3110 through § 3112.

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BRIEF *AMICI CURIAE* OF THE TWENTY-SIX MULTI-EMPLOYER TRUST FUNDS IN SUPPORT OF PETITIONER

Come now the amici curiae U.A. Local No. 467 Pension Trust Fund, U.A. Local No. 467 Health and Welfare Trust Fund, Northern California Plasterers Health and Welfare Trust Fund, Bay Area Pipe Trades Pension Trust Fund, Bay Area Pipe Trades Health and Welfare Trust Fund, U.A. Local No. 159 Defined Contribution Plan, U.A. Local No. 342 Defined Contribution Plan, U.A. Local Nos. 343 and 355 Defined Contribution Plan, U.A. Local No. 444 Defined Contribution Plan, Pipe Trades District Council No. 36 Pension Trust Fund, Pipe Trades District Council No. 36 Health and Welfare Trust Fund, U.A. Local No. 393 Pension Trust Fund, U.A. Local No. 393 Health and Welfare Trust Fund, Northern California Plastering Industry Pension Trust Fund, Plastering In-

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INTEREST OF THE *AMICI CURIAE*

These amici curiae are multiemployer trust funds whose participating employers are subcontractors in the California construction industry. All of these trust funds are established pursuant to § 302(c) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 186 (c) and maintain employee benefit plans within the meaning of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, et seq. ["ERISA"]. These amici curiae have the responsibility under law for collecting all fringe benefit contributions due to them as third party beneficiaries under the collective bargaining agreements between their participating employers and their participating labor organizations. They use these contributions to provide welfare and pension benefits to their participants and beneficiaries, in accordance with the terms of ERISA-regulated employee benefit plans.

California Civil Code § 3111 names trust funds such as these amici as being among the many claimants who have a lien right against real property in the state for collection of unpaid compensation due for the value of goods supplied to and services performed on "work of improve-

ment" as described in California Civil Code §§ 3128-31. The other permitted claimants are enumerated in California Civil Code §§ 3110 and 3112. The mechanic's lien remedy has a lengthy history in California. The mechanic's remedy has been a part of California law since 1850 and became part of the California Constitution in 1879. It provides an assurance that the working person, whether employed directly by the owner, or by a contractor or subcontractor, will receive his or her compensation for work that has contributed to a construction project from the value of the property itself, if the employer defaults. The California mechanic's lien law provides notice and other procedural requirements which serve to balance the rights of the property owner with the rights of those who have supplied labor and materials to the property. *Borchers Bros. v. Buckeye Incubator Co.*, 59 C.2d 234, 238, 28 Cal. Rptr. 697, 699 (1963), *Connolly Development, Inc. v. Superior Court*, 17 Cal.3d 803, 132 Cal. Rptr. 477 (1976).

The California mechanic's lien remedy is these amici trust funds' most important and most effective remedy for the collection of due but unpaid employer contributions. The California mechanic's lien gives the trust funds a powerful pre-judgment attachment remedy in those cases in which a construction employer has not made the contributions required by his labor agreement for work done by his employees on a project. In practice, the mechanic's lien enables these amici to reach funds due the delinquent employer from the owners of the property improved by the employees' labor. Since owners and general contractors typically withhold sufficient money to pay potential lien claimants until the short time allowed for enforcing the mechanic's lien has expired, the filing of a mechanic's lien in practice is a highly efficient and cost effective attachment remedy. In return for a release of lien, the trust funds collect an account receivable of the delinquent employer from the third party who owes the employer money. Frequently, due to employer insolvency, mechan-

ic's lien collections are the only source of recovery of the contributions due. Like all mechanic's lien claimants, the basis of the trust funds' claim is that the contractor has defaulted on its private contract obligation to the lien claimant. The mechanic's lien remedy thus puts employee benefit plans on the same footing with other providers of goods and services that improve real property. Without this powerful tool for the collection of fringe benefit contributions, these particular trust funds would not have collected over nine million dollars in the last several years and stand to lose millions of dollars in future contributions. This loss will have a severely detrimental impact on their ability to provide promised welfare and pension benefits to their participants.

The 1980 amendments to ERISA were supposed to assist trust funds in collecting delinquent fringe benefit contributions, not take away their most effective collection device. ERISA is supposed to preempt the regulation of and singling out of trust funds for special treatment, not eliminate collection remedies of general application. If the Court does not grant certiorari and reverse the opinion below, the trust funds' ability to collect fringe benefit contributions due will be adversely affected and lower courts will continue to misinterpret this Court's rulings in *Mackey v. Lanier Collection Agency Service, Inc., infra* and *Pilot Life Insurance Co. v. Dedeaux, infra.*

SUMMARY OF ARGUMENT

THE COURT SHOULD GRANT CERTIORARI IN THIS CASE BECAUSE THE CASE RAISES AN IMPORTANT QUESTION AND THE CALIFORNIA SUPREME COURT HAS MISINTERPRETED AND MISAPPLIED THIS COURT'S PRIOR DECISIONS IN *MACKEY v. LANIER COLLECTION AGENCY SERVICE, INC.* AND *PILOT LIFE INSURANCE CO. v. DEDEAUX*

The California mechanic's lien law is not preempted by ERISA § 514(a) because it does not single out ERISA-regulated employee benefit plans for any special treat-

ment. Instead it includes plans in a large list of enumerated claimants entitled to the lien, a longstanding state remedy providing for payment for the value of labor and materials provided to construction projects. Under the reasoning in *Mackey v. Lanier Collection Agency Service, Inc.*, discussed below, this state remedy should escape ERISA preemption as a collection remedy generally applicable to the entire class of persons and entities who are owed money for labor and services provided to construction projects.

Section 3111 of the California Civil Code does not "relate to" an employee benefit plan within the meaning of this Court's analysis in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987). The California Supreme Court has overread the *Pilot Life Insurance Co.* decision by finding § 3111 preempted.

REASONS THE WRIT SHOULD BE GRANTED

I. THE COURT SHOULD GRANT CERTIORARI IN THIS CASE BECAUSE THE CALIFORNIA SUPREME COURT'S DECISION BELOW CONFLICTS WITH THIS COURT'S DECISION IN *MACKEY v. LANIER.*

The California's mechanic's lien law, while a powerful prejudgment attachment remedy for the collection of fringe benefit contributions, does not increase the employer's obligation to contribute to the trust funds; that obligation is set solely by collective bargaining between the employer and a participating labor organization. The mechanic's lien doesn't regulate the administration of any plan or interfere with delivery of benefits. The lien is not given just to trust funds, but also to laborers, contractors, materialmen, and all other persons who improve real property in the State of California who have not been paid the contracted-for-price for their improvement of the property.

Section 514(a) of ERISA does not preempt state remedies to collect judgments. *Mackey v. Lanier Collection Agency and Service, Inc.*, 486 U.S. 825, 830, 108 S.Ct. 2182, 100 L.Ed.2d 836, 844 (1988). Rule 69 of the Federal Rules of Civil Procedure requires the use of state remedies to enforce judgments, including all state prejudgment attachment, claim and delivery, and other prejudgment collection remedies, as well as post-judgment enforcement procedures. State collection remedies of all sorts are therefore available to enforce federal obligations.

For these amici, whose fringe benefits are paid by employers who are subcontractors in the construction industry, the mechanic's lien is the most effective way of reaching the delinquent employer's accounts receivable. The employer's obligation is decreased by the amount collected from the mechanic's lien and litigation costs are kept to a minimum since a lawsuit is rarely needed to enforce their mechanic's lien right.

A. California Civil Code § 3111 Is Not Preempted by ERISA Because It Does Not Single Out Employee Benefit Plans for Special Treatment.

Civil Code § 3111 in effect simply allows trust funds to collect a portion of the construction workers' wages by using the state mechanic's lien remedy available to all persons who have improved California property. As such, it is unlike the Georgia garnishment statute which this Court found to be preempted by ERISA. The Georgia statute considered by this Court in *Mackey* provided a special exemption from the general state garnishment laws for ERISA-regulated welfare plans. The Court's rationale for holding this Georgia statute preempted was that it "singles out ERISA employee welfare benefits for different treatment under state garnishment procedures." This different treatment "is illustrated not only by the express reference to ERISA plans . . . but also in the disparate treatment accorded to non-ERISA welfare plans under

Georgia law." (ERISA plans were protected by the Georgia statute, but non-ERISA plans were not.) *Mackey, supra.*

Section 3111 does not create, interpret or enforce any provision of an employee benefit plan. Section 3111 does not cause employee benefits to be created or lost. Section 3111 does not create or change any employer contribution requirement. All that § 3111 does is place an obligation, in the nature of a security obligation, upon a property owner who is not a party to any employee benefit plan or any collective bargaining agreement, to pay money into a trust fund. Under Civil Code § 3153 of the mechanic's lien law, the owner of real property is entitled to withhold from the sum due the contractor, the amount of any lien for labor, services, equipment and materials. The sum being withheld to satisfy the lien can be deducted from the amounts due the contractor. *See, In re Flooring Concepts, Inc.*, 37 B.R. 957, 961-2 (9th Cir. Bkry. App. 1984).

The California Supreme Court in this case has erroneously interpreted the precedent of this Court to find that the decision in *Mackey v. Lanier, supra*, does not apply to shield § 3111 from preemption on the basis that it is in reality a state law remedy of general application. Instead, it has ruled that § 3111 "relates to" employee benefit plans within the meaning of § 514(a) as defined in *Pilot Life* and its progeny (a) because the statute expressly refers to employee benefit plans and (b) because the statute purportedly creates a new funding mechanism for plans. In fact, employee benefit plans are "related to" only in the sense of being included in a lengthy list of permitted lien claimants enumerated in California Civil Code §§ 3110-3112 (Appendix A). The permitted claimants include all those who are owed compensation on account of provision of labor and materials used to improve real property. "Express trusts" providing employee benefits are included in the list in acknowledgment

that they are the contractually-designated recipients of part of the compensation package for employees covered by collective bargaining agreements. California mechanic's lien rights may be, and freely are, assigned. To exclude employee benefit trusts from the permitted group of lien claimants would, completely unnecessarily, both undermine the collective bargaining rights of the covered employees guaranteed by Section 7 of the National Labor Relations Act and isolate ERISA-regulated employee benefit plans as the *only* party legally entitled to receive money due for work performed on a work of construction in California who does not share in the mechanic's lien remedy.

The majority of the California Supreme Court made much of the fact that these trusts do not themselves provide labor or materials. This is a totally specious analysis. These trusts exist for the sole purpose of serving participants, as required by 29 U.S.C. § 302(c). Their participants *do* provide labor on construction projects. The California Supreme Court's assertion that the mechanic's lien creates a new "funding mechanism" for employee benefit plans is equally spurious. The majority joining in the opinion in this case may, as they seem to, disapprove of the mechanic's lien as an unfair burden on real property. However, the lien is of ancient origin with stringent time limits and notice requirements to protect owners of real property. Section 3111 merely acknowledges employee benefit trust funds as the proper payee of part of the laborers' wage package. These express trusts are not creatures of a state regulation program affecting employee benefit plans; they were created by Congress with passage of the Taft-Hartley Act and have, accordingly, been a significant feature of multiemployer bargaining in the construction industry since 1947. To acknowledge their role in collective bargaining as a contractually named recipient of part of the laborers' wage in construction is not a singling out of plans for special treatment under State law, or a creation of a new fund-

ing mechanism. It is merely what it appears to be: inclusion of these trusts in a list of essentially like lien claimants. To exclude them will result in singling them out for unfair treatment.

The error of the California Supreme Court has recently been repeated in the Ninth Circuit Court of Appeals decision in *Sturgis, et al. v. Herman Miller, Inc., et al.* (9th Cir. Ct. App. No. 90-15054, 9-3-91), reprinted as Appendix B. The decision once again on the one hand distinguishes *Mackey* on the basis that the garnishment remedy it received was more "procedural" than the California mechanic's lien procedures. The Ninth Circuit on the other hand finds that § 3111 must be preempted under this Court's decision in *Pilot Life Insurance Co.* because it has a "reference to" or "connection with" an employee benefit plan. (Appendix B at pp. 7a-8a) Once again, this overreads the *Pilot Life Insurance Co.* decision by holding that "reference to" an employee benefit plan sufficient for § 514(a) preemption is present if employee benefit plans are merely included in a list of essentially like lien claimants. Once again, it wrongly distinguishes *Mackey* and "turns the logic of *Mackey* on its head" (*Sturgis*, Appendix B at p. 10a), in the eloquent dissent of Judge Pregerson:

> The majority errs by not viewing section 3111 in the context of California's general mechanic's lien laws. California creates mechanic's liens in favor of "[m]echanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services . . . ." Cal. Civ. Code § 3110. Section 3111 provides the same lien to employee benefit trust funds for unpaid employer contributions. California thus does not single out ERISA plans for special treatment, but gives ERISA plans the same procedure to recover unpaid employer

contributions as California gives to employees who are not members of ERISA plans.

Employee benefits (which may include pension, health, welfare, and vacation benefits) are an important part of an employee's compensation. The result of the majority's opinion is that employees who are not members of ERISA plans may use mechanic's liens to ensure that employers fulfill their obligations to pay benefits—but members of ERISA plans may not. This turns the logic of *Mackey* on its head. *Mackey* precludes state laws that single out ERISA plans; it does not prohibit even-handed state-law enforcement procedures.

In addition to being claimants under mechanic's lien law, numerous of these amici also own real property in this state. The California Supreme Court's decision below creates the anomaly of allowing the mechanic's lien to be used against but not by ERISA-regulated trust funds. This clearly circumvents both the majority and minority opinion in *Mackey v. Lanier*, *supra*. The majority opinion in *Mackey* recognized the ability of trust funds to engage in common lawsuits for rent, torts, and so forth. The petitioner's mechanic's lien action is just such a lawsuit. Certainly, a result that the mechanic's lien can be used against ERISA funds but not by ERISA funds is not tolerable. The ability to "sue or be sued" under Section 502(a)(3) of ERISA surely requires the even handed application of state collection procedures. The minority opinion in *Mackey* was concerned that the onerous obligation of complying with Georgia's general garnishment procedures would disrupt the administration of plans and the delivery of benefits. The California mechanic's lien law is not at all invasive of plan administration or the delivery of benefits. It is merely a simple and effective tool for the collection of fringe benefit contributions due under a collective bargaining agreement.

This Court needs to reverse the decision of the California Supreme Court and clarify this issue to prevent

these amici from losing their very valuable ability to use mechanic's liens in cases where the fringe benefit portion of the laborers' wage has not been paid.

B. California Civil Code § 3111 Must Be Read in Context With California Civil Code § 3110.

When read in context with Civil Code § 3110, Section 3111 is merely a standing statute which gives trust funds the right to enforce construction workers' direct ability to collect contributions to pay for their fringe benefits established under Civil Code § 3110. The California legislature, in giving the trust funds standing to assert the employees' right, prevented superfluous litigation involving challenges to the trust funds' standing to pursue employee's mechanic's liens under § 3110 or the employee's ability to collect fringe benefits owed him just because the fringe benefits are paid to trust funds. Thus, by enacting this legislation, California avoided unnecessary challenges of the type reported in *United States ex rel. Sherman v. Carter*, 353 U.S. 210, 1 L.Ed.2d 776, 77 S.Ct. 793 (1957). When § 3111 is read in context with 3110, it is clear that the California statute does not single out ERISA plans for special or disparate treatment but is merely adding trust funds to the list of the many claimants who have the right to enforce obligations due to them through the use of the state mechanic's lien remedy.

C. Even if Civil Code § 3111 Is Preempted by ERISA, § 3110 Is Not So Preempted and the Trust Funds' Mechanic's Lien Right Should Be Upheld Under § 3110.

California Civil Code § 3110 (Appendix A) is similar to 40 U.S.C. § 270a of the Miller Act which requires those contractors on federal jobs to post a payment bond "for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract." Under the Miller Act, "every person who has furnished labor and material in the pros-

ecution of the work provided for in such contract . . . and who has not been paid in full therefor . . . shall have the right to sue on such payment bond . . . for the sums justly due him." This Court in *U.S. ex rel Sherman v. Carter*, *supra*, 353 U.S. at p. 216, 1 L.Ed.2d at p. 782 recognized that the "Miller Act represents a congressional effort to protect persons supplying labor and materials for the construction of federal public buildings in lieu of the protection they might receive under state statutes with respect to the construction of non federal buildings." In this case, the claimants were joint labor management employee benefit trust funds of exactly the same kind as the amici, and other trust funds who could enforce mechanic's liens in California under California Civil Code § 3110. Further, the claimed fringe benefits were payable to the claiming trusts as third party beneficiaries of a collective bargaining agreement exactly paralleled to the facts in this case. Although such "express trust funds" were not specifically named as Miller Act claimants, and although the fringe benefit contributions were due to the trust fund, not the employee, this Court found that "the unpaid contributions were a part of the compensation for the work to be done by Carter's employees" and "not until the required contributions have been made will Carter's employees be 'paid in full' for their labor in accordance with the collective bargaining agreements." (353 U.S. at 217, 1 L.Ed.2d at 783) Therefore, although the Miller Act does not expressly name trust funds as a Miller Act claimant, the trust funds stand in the shoes of their participants and can successfully sue the payment bond surety under the Miller Act. Likewise, even if there was no California Civil Code § 3111, petitioner could properly assert their participants' claims for fringe benefits due them under Section 3110. Since it is clear that § 3110 does not single out ERISA plans for special or disparate treatment or seek to regulate ERISA plans in any way, it is not preempted by ERISA and trust funds continue to have a valid lien claim under § 3110.

D. The California Mechanic's Lien Statute Creates No New Contribution Obligation.

Unlike the state statutes requiring payment of prevailing wages on public works or regulating apprenticeship programs, which are being struck down as preempted by ERISA by various Courts around the country, the California Mechanic's Lien Law does not add to an employer's obligation. See, e.g., *General Electric v. N.Y. Labor Dept.*, 891 F.2d 25 (1989), cert. denied —— U.S. ——, 110 S.Ct. 2603, 110 L.Ed.2d 283 (1990). *Hydrostorage Inc. v. Northern Boilermakers Local Joint Apprenticeship Comm.*, 891 F.2d 719 (9th Cir. 1989), cert. denied —— U.S. ——, 111 S.Ct. 72, 112 L.Ed.2d 46 (1990). The amount claimed in a mechanic's lien is determined by multiplying the hours actually worked on the property by a covered employee, by the rate set forth in the employer's collective bargaining agreement. The use of the mechanic's lien does not change or increase the employer's legal obligation to make payments to the trust funds. In fact, the trust funds' successful use of the mechanic's lien will reduce the amount the employer owes just like the lumber company's successful use of this remedy reduces the employer's material bill. In many instances, these amici have used the mechanic's lien with the express consent and assistance of their signatory subcontractors. Subcontractors can unfortunately fall victim to unscrupulous developers and general contractors who delay payment to the subcontractors and make meritless backcharges and other contract claims against the subcontractors whereas these same developers and general contractors cannot use these same meritless defenses against the trust funds mechanic's lien claim. It would be an absurd reading of ERISA indeed not to allow the employer's debt to the trust funds to be reduced by the use of the California mechanic's lien law, but to allow all of the employer's other contract debts arising out of work on the property to be so reduced. Yet, the California Su-

preme Court's decision below promotes such an arbitrary and discriminatory use of the statute.

II. THIS COURT SHOULD GRANT CERTIORARI IN THIS CASE TO PREVENT LOWER COURTS FROM MISAPPLYING ITS *PILOT LIFE* DECISION TO COLLECTION LAWSUITS.

The California Supreme Court has misinterpreted this Court's ruling in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987). In *Pilot Life*, this Court correctly noted that *state claims against ERISA plans by participants or beneficiaries* are preempted by ERISA. This same reasoning does not apply to a plan's claim against non-ERISA parties.

The California Mechanic's Lien Law does not purport to regulate employee benefit plans and hence is not preempted by ERISA. The Mechanic's Lien Law does not create any additional obligation on the contributing employer or regulate the administration of the plans or delivery of benefits in any way. A Mechanic's lien only obligates the property owner to fully compensate individuals for the value for which his labor improved the property.

Although ERISA preemption is broad, it is not so broad as to preempt this state statute. California Civil Code § 3111 does not "relate to" an employee benefit plan within the meaning of Section 514 because (a) it does not regulate or in any way effect the terms, conditions or administration of employee benefit plans, now or hereafter and (b) it does not "relate to," "regulate" or affect in any other way the obligations and responsibilities of Trustees, administrators, employers, participants, and beneficiaries or any other party to an ERISA-regulated employee benefit plan. Rather § 3111 merely provides a means of collecting a portion of the plan participants' wages from property owners who are not parties to any collective agreement, against whom ERISA provides no

remedy, and who have no connection with any employee benefit plan and consequently are not ERISA parties.

CONCLUSION

As discussed above, the California Mechanic's Law is a state law of general application which gives the amici trust funds as well as suppliers of labor and materials to construction projects, generally, a pre-judgment attachment tool. It does not purport to regulate employee benefit plans in any way. Indeed, the California Supreme Court's ruling below singles out ERISA-regulated trust funds for disparate treatment since they will be the only parties who receive money payable on account of labor performed on a construction project who *cannot* use this collection remedy. Nothing in ERISA itself or its legislative history justifies this result. The Court should therefore issue the writ of certiorari and reverse the erroneous decision below.

Respectfully submitted,

JOHN J. DAVIS, JR.*
RAPHAEL SHANNON
LORI A. NORD
MCCARTHY, JOHNSON & MILLER
Law Corporation
595 Market Street, Suite 2200
San Francisco, CA 94105
(415) 882-2992
Attorneys for Amici Curiae

Dated: October 15, 1991

* Counsel of Record

APPENDICES

APPENDICES

APPENDIX A

RELEVANT CALIFORNIA CIVIL CODE PROVISIONS

A. Section 3110. [Enumeration of persons entitled]

Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement shall have a lien upon the property upon which they have bestowed labor or furnished materials or appliances or leased equipment for the value of such labor done or materials furnished and for the value of the use of such appliances, equipment, teams or power whether done or furnished at the instance of the owner or of any person acting by his authority or under him as contractor or otherwise. For the purposes of this chapter, every contractor, subcontractor, sub-subcontractor, architect, builder, or other person having charge of a work of improvement or portion thereof shall be held to be the agent of the owner.

B. Section 3111. [Trust fund for payment of fringe benefits supplemental to wage agreement]

For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.

C. Section 3112. [Claimant making site improvement at instance or request of owner]

Any claimant who, at the instance or request of the owner (or any other person acting by his authority or under him, as contractor or otherwise) of any lot or tract of land, has made any site improvement has a lien upon such lot or tract of land for work done or materials furnished.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 90-15054

D.C. No. CV-S-89-1273-LKK

M. C. STURGIS, *et al.*,
Plaintiff-Appellants,
v.

HERMAN MILLER, INC., NVE CONSTRUCTORS, INC.;
COLUMBIA STEEL FABRICATORS, INC., DOES 1-20;
DOE 16, LAWYERS SURETY COMPANY,
Defendant-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted April 12, 1991*
San Francisco, California

Filed September 3, 1991

Before: Harry Pregerson, John T. Noonan, Jr. and
David R. Thompson, Circuit Judges.

Opinion by Judge Thompson; Dissent by Judge Pregerson

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* The panel finds this case appropriate for submission without oral argument pursuant to Ninth Circuit Rule 34-4 and Fed. R. App. P. 34(a).

COUNSEL

Patrick M. Hevesy, Los Angeles, California, for the plaintiff-appellants.

Aldo Branch, and Richard M. Peekema, San Jose, California, for the defendant-appellees.

OPINION

THOMPSON, Circuit Judge:

This appeal presents the issue whether the Employee Retirement Income Security Act of 1974 ("ERISA") preempts a California statute that grants an employee trust, established pursuant to a collective bargaining agreement, a mechanic's lien to collect unpaid employer contributions due for employee fringe benefits. After finding that ERISA preempted the state lien statute, the district court dismissed an action brought by M.C. Sturgis and the other trustees of the California Field Ironworkers Trust Fund (the "Trustees") seeking to collect on a mechanic's lien release bond. We affirm.

FACTS

The Trustees administer the California Field Ironworkers Trust Funds. Columbia Steel Fabricators ("Columbia") was a signatory to a collective bargaining agreement requiring employer contributions for the pension, health, welfare, vacation and other benefits of each of its field ironworker employees. When Columbia did not make the contributions due for work done on property owned by a third party, the Trustees recorded a mechanic's lien on the property pursuant to California Civil Code § 3111. The Trustees then brought this action in California Superior Court to enforce the lien. Columbia and its surety posted a mechanic's lien release bond in favor of the Trustees. The Trustees amended the complaint to state a claim on the release bond, and dismissed all parties except Columbia and its surety.

Columbia and its surety removed the action to federal court, and moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The district court granted the motion, holding that ERISA preempts California Civil Code § 3111. This appeal followed.

DISCUSSION

"ERISA § 514(a) pre-empts 'any and all State laws insofar as they may now or hereafter relate to any employee benefit plan' covered by the statute." *Mackey v. Lanier Collection Agency and Service, Inc.*, 486 U.S. 825, 829 (1988) (quoting 29 U.S.C. § 1144(a)). ERISA preemption is not limited to "state law specifically designed to affect employee benefit plans." *Shaw v. Delta Airlines*, 463 U.S. 85, 98 (1983)). Instead, a state law "relates to" a benefit plan if it has a "connection with or reference to such a plan" whatever the state law's underlying intent. *Id.* at 97.

California Civil Code § 3111 permits the trustee of an express trust, established pursuant to a collective bargaining agreement requiring employer payments or supplemental fringe benefits, to acquire a mechanic's lien on real property for unpaid contributions. Cal. Civ. Code § 3111.[1]

Although Cal. Civ. Code § 3111 makes no explicit reference to ERISA (*cf. Mackey*, 486 U.S. at 829), the statute describes trusts established to receive employer's

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[1] California Civil Code § 3111 provides:

> For purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.

Cal. Civ. Code § 3111 (West 1974).

contributions "on account of fringe benefits supplemental to a wage agreement." Cal. Civ. Code § 3111. Such trusts exist to implement employee benefit plans. Section 3111, therefore, must be construed as a law "specifically designed to affect employee benefit plans," *see Mackey*, 486 U.S. at 829. As such, it is "related to" ERISA, whether we interpret it as a statute which has a "reference" to an employee benefit plan or a "connection with" such a plan. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47 (1987); *see also Mackey*, 486 U.S. at 829.

Here, the Trustees argue Cal. Civ. Code § 3111 creates no state law cause of action or remedy, but instead provides merely a mechanism through which the trustees can collect what is due the trust. It thus resembles, the Trustees urge, the general garnishment statute upheld by the Supreme Court in *Mackey*.

In *Mackey*, a collection agency, acting pursuant to Georgia law, tried to levy writs of garnishment on an employee welfare benefit plan to intercept and collect vacation benefit money owed to the participants. Georgia had an antigarnishment statute which exempted from garnishment "[f]unds or benefits of [an] . . . employee benefit plan or program subject to [ERISA]." Ga. Code Ann. § 18-4-22.1 (1982). The Court held that even though this antigarnishment statute was enacted to "help effectuate ERISA's underlying purposes" it was nonetheless preempted by ERISA. *Mackey*, 486 U.S. at 829.

Once it found the antigarnishment statute preempted, the *Mackey* Court turned to an analysis of Georgia's general state garnishment statute. The Court concluded that ERISA did not preempt the general garnishment statute because the state statute provided a mere mechanism for the collection of judgments against plan participants. The Court noted that ERISA specifically provided that plans could "sue and be sued." *Id.* at 833. Because ERISA does not provide mechanisms to execute

judgments won against plans, the Court reasoned these mechanisms had to be supplied by state law. *Id.* at 834. Moreover, "[w]hen Congress provides by law that an entity may 'sue and be sued,' this includes 'all civil process[es] incident to . . . legal proceedings' including '[garnishment and attachment.'" *Id.* at 834 n.9 (quoting *FHA v. Burr*, 309 U.S. 242, 245-46 (1940)). Finally, the Court observed that "lawsuits against ERISA plans for run-of-the-mill state-law claims such as unpaid rent, failure to pay creditors, or even torts committed by an ERISA plan . . . are relatively commonplace." *Id.* at 833. If attachment of ERISA plan funds to enforce judgments won in these kinds of actions do not relate to an ERISA plan, the Court reasoned, "we do not see how [the collection agency's] proposed garnishment order would do so." *Id.* at 834.

The Court was careful to point out, however, that under Georgia law,

> [G]arnishment is a "procedural" mechanism for the enforcement of judgments. Georgia's statute that provides for garnishment creates no substantive causes of action, no new bases for relief, or any grounds for recovery; the Georgia garnishment law does not create the rule of decision in any case affixing liability. Rather under Georgia law, postjudgment garnishment is nothing more than a method to collect judgments *otherwise* obtained by prevailing on a claim against the garnishee.

Id. at 835 n.10 (emphasis in original).

The gravamen of the Trustees' argument under *Mackey* is that just as the writ of garnishment in *Mackey* was a procedural device—a mere mechanism—to collect a debt, so is the mechanic's lien mechanism provided by Cal. Civ. Code § 3111. We disagree. Unlike the generally applicable garnishment statute reviewed in *Mackey*, section 3111 contains a clear reference to and connection

with ERISA. It singles out employee benefit plans for the specific purpose of according them lien rights on real property to collect delinquent employer contributions. In this reference to and connection with employee benefit plans, it resembles Georgia's preempted antigarnishment statute. True, Cal. Civ. Code § 3111 does not expressly use the term "ERISA" as the antigarnishment statute did in *Mackey*. But it need not do so where the statute obviously singles out ERISA plans. *Mackey*, 825 U.S. at 831. There can be no doubt that section 3111 accords ERISA plans a unique procedural benefit by conferring upon them special mechanic lien rights to collect delinquent contributions. Accordingly, ERISA preempts Cal. Civ. Code § 3111.[2]

AFFIRMED.

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[2] The Fifth Circuit in *Ironworkers Mid-South Pension Funds v. Terotechnology Corp.*, 891 F.2d 548 (5th Cir. 1990), held that ERISA preempted a strikingly similar Louisiana statute. The court analyzed the Louisiana statute and ERISA preemption in terms of the substantive right created by the statute, as opposed to the enforcement mechanism discussed in *Mackey*, and the inclusion in ERISA of what the court stated were civil enforcement provisions which authorized collection by a fiduciary of obligations owed to the trust, authorization which the court concluded encompassed the civil enforcement provision of the Louisiana statute.

HARRY PREGERSON, Circuit Judge, Dissenting

In *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988), the Supreme Court held that a Georgia statute exempting employee benefit plans from the reach of the state's general garnishment statute is pre-empted by ERISA. More importantly to this case, however, the Court also concluded that ERISA does not pre-empt Georgia's general garnishment statute. The Court explained that, because ERISA provides no procedures for the collection of judgments. "Congress did not intend to forbid the use of state-law mechanisms of executing judgments." *Id.* at 831. Because I believe the mechanic's lien provided by Cal. Civ. Code § 3111, like the garnishment procedure in *Mackey*, is not pre-empted by ERISA, I respectfully dissent.

The majority finds that section 3111 is pre-empted by ERISA because it "contains a clear reference to and connection with ERISA." Majority opinion at 12289. I do not read *Mackey*, however, to hold that a mere reference in a state statute to an employee benefit trust fund controls the pre-emption question. Rather, a careful reading of *Mackey* teaches us that the determinative pre-emption factor is whether the state-law enforcement procedure in question singles out ERISA plans for special treatment. *Mackey*, 486 U.S. at 830 ("we hold that [the Georgia statute], which singles out ERISA employee welfare benefit plans for different treatment under state garnishment procedures, is pre-empted") (footnote omitted); *id.* at 838 n.12 ("While we believe that state-law garnishment procedures are not pre-empted . . ., we also conclude that *any* state law which singles out ERISA plans, by express reference, for special treatment is pre-empted. It is this "singling out" that pre-empts the Geor-

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Because we resolve the question of preemption in the present case on the basis of the California statute's reference to and connection with ERISA plans, we do not consider the additional grounds on which the Fifth Circuit determined preemption in *Terotechnology*.

gia antigarnishment exception.") (citation omitted). Normally, a statute that explicitly refers to ERISA plans will also "single out" such plans for special treatment, and therefore will be pre-empted by ERISA, but this result is not necessarily so.

The majority errs by not viewing section 3111 in the context of California's general mechanic's lien laws. California creates mechanic's liens in favor of "[m]echanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services . . . ." Cal. Civ. Code § 3110. Section 3111 provides the same lien to employee benefit trust funds for unpaid employer contributions. California thus does not single out ERISA plans for special treatment, but gives ERISA plans the same procedure to recover unpaid employer contributions as California gives to employees who are not members of ERISA plans.

Employee benefits (which may include pension, health, welfare, and vacation benefits) are an important part of an employee's compensation. The result of the majority's opinion is that employees who are not members of ERISA plans may use mechanic's liens to ensure that employers fulfill their obligations to pay benefits—but members of ERISA plans may not. This turns the logic of *Mackey* on its head. *Mackey* precludes state laws that single out ERISA plans; it does not prohibit even-handed state-law enforcement procedures.

In many instances, the mechanic's lien may be the only way for an ERISA plan to protect fully the interests of its employee beneficiaries. The majority places employee benefits unnecessarily at risk by eliminating this important state-law enforcement measure. *See Mackey*, 486 U.S. at 834 ("state-law methods for collecting money

judgments must, as a general matter, remain undisturbed by ERISA; otherwise, there would be no way to enforce such a judgment"). Because I believe ERISA does not preclude an ERISA plan from using the mechanic's lien provisions provided by California statute, I respectfully dissent.